SALMAH SULAIMAN & ANOR.

v.

METROPLEX DEVELOPMENT SDN. BHD.

COURT OF APPEAL, KUALA LUMPUR
ZAKARIA YATIM JCA
NH CHAN JCA
MAHADEV SHANKAR JCA
[CIVIL APPEAL NO: W-04-31-94]
10 SEPTEMBER 1996

CONTRACT: *Building contract - Vacant possession, delivery of - Delay - Whether purchaser entitled to damages for late delivery from developer - Determination of period of delay*

CONTRACT: *Building contract - Housing Developers (Control & Licensing) Rules 1970, r 12(1)(1) - Water and electricity, delay in supply of - Whether developer liable for delays caused by public authorities - Scope of developer's responsibilities - Whether purchaser entitled to damages for delay in supply of water and electricity*

The appellants in the instant appeal were the administrators of the estate of one Ahmad Ibrahim ('the deceased') while the respondent was a housing developer under the Housing Developer (Control & Licensing) Act 1966. On 4 April 1981, the deceased entered into a sale and purchase agreement ('the S&P') with the respondent for the purchase of a house from the latter. Under the S&P, the respondent was to deliver vacant possession of the house to the deceased not later than 3 October 1982.

The appellants alleged that the respondent only delivered the keys to the house on 25 July 1984 and that there was no supply of water and electricity until January 1985. Thus, the appellants alleged that the respondent had breached the S&P and proceeded to claim liquidated damages for late delivery calculated as from 4 October 1982 to 25 January 1985. It was the appellants' argument that vacant possession of the house was delivered only when water and electricity were supplied to the house.

The respondent contended that the internal water and electricity mains of the house were connected to the external mains on 31 March 1983 and, hence, vacant possession of the house was delivered to the appellants on that very same day. The respondent further contended that the appellants were only entitled to claim liquidated damages for late delivery and not for any delays in the supply of water and electricity. The Sessions Court accepted the respondent's contentions and, on appeal, the High Court confirmed the decision of the Sessions Court. The appellants appealed.

Held:

Per Zakaria Yatim JCA

[1] Rule 12(1)(1) of the Housing Developers (Control & Licensing Rules 1970 ('the Rules') only requires the housing developer to connect the external electricity and water mains of the appropriate public authorities to the internal mains within the house. The housing developer is not under an obligation to ensure the flow of water and electricity into the house.

[2] In the instant appeal, the S&P explicitly provided that the respondent shall not be responsible or liable for any delays on the part of the relevant authorities in supplying water and electricity. Consequently, vacant possession of the house was delivered on 31 March 1983, and the appellants were not entitled to damages in respect of the delay in the supply of water and electricity.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

***KONTRAK:** Kontrak bangunan - Penyerahan milikan kosong - Kelewatan - Samada pembeli berhak kepada gantirugi bagi serahan lewat daripada pemaju - Penentuan tempoh lewat*

***KONTRAK:** Kontrak bangunan - Peraturan Kawalan dan Pelesenan (Pemaju Perumahan) 1970 k. 12(1)(1) - Kelewatan membekalkan air dan bekalan letrik - Samada pemaju bertanggungan bagi kelewatan yang disebabkan oleh pihak berkuasa awam - Samada pembeli berhak kepada gantirugi bagi kelewatan dalam membekalkan air dan letrik*

Perayu dalam rayuan semasa ini pentadbir bagi harta pusaka seorang yang bernama Ahmad Ibrahim ("simati") sementara responden pula adalah pemaju perumahan di bawah Akta Pemaju Perumahan (Kawalan & Pelesenan) 1966. Pada 4 April 1981, simati telah memasuki satu perjanjian jualbeli ("S&P tersebut") dengan responden untuk membeli sebuah rumah daripadanya. Di bawah S&P tersebut, responden harus menyerahkan milikan kosong rumah tersebut kepada simati tidak lewat daripada 3 Oktober 1982.

Perayu telah mendakwa bahawa responden hanya menyerahkan kunci rumah tersebut pada 25 Julai 1984 dan bahawa tidak terdapat bekalan air dan letrik sehingga bulan Januari 1985. Dengan itu, perayu mendakwa bahawa responden telah memungkiri S&P tersebut dan terus menuntut gantirugi jumlah tertentu bagi serahan lewat yang dikira daripada 4 Oktober 1982 sehingga 25 Januari 1985. Ianya merupakan hujahan perayu bahawa milikan kosong rumah tersebut hanya diserahkan apabila air dan letrik dibekalkan ke rumah tersebut.

Responden menegaskan bahawa salur dalaman utama air dan letrik rumah tersebut telah disambungkan kepada salur utama luaran pada 31 Mac 1983 dan, dengan itu, 'milikan kosong rumah tersebut telah diserahkan kepada perayu pada hari yang sama. Responden selanjutnya menegaskan bahawa perayu hanya berhak untuk menuntut gantirugi jumlah tertentu bagi serahan lewat dan bukannya bagi apa-apa kelewatan dalam pembekalan air dan letrik. Mahkamah Sesyen telah menerima penegasan responden dan, ketika dirayui, Mahkamah Tinggi mengesahkan keputusan Mahkamah Sesyen. Perayu telah merayu.

Diputuskan:

Oleh Zakaria Yatim JCA

[1] Kaedah 12(l)(1) Peraturan Pemaju Perumahan (Kawalan & Pelesenan) 1970 ("Peraturan tersebut") hanya menghendaki pemaju perumahan menyambungkan salur utama luaran air dan letrik pihak berkuasa awam yang berkaitan kepada saluran-saluran dalaman di dalam rumah. Pemaju perumahan tidak berkewajipan untuk memastikan saliran air dan letrik ke dalam rumah.

[2] Dalam rayuan semasa ini, S&P tersebut telah dengan terus terang memperuntukkan bahawa responden tidak akan bertanggungjawab atau bertanggungan bagi apa-apa kelewatan oleh pihak-pihak berkuasa yang berkaitan dalam membekalkan air dan letrik. Akibatnya, milikan kosong rumah itu telah diserahkan pada 31 Mac 1983, dan perayu adalah tidak berhak kepada gantirugi berhubung dengan kelewatan dalam pembekalan air dan letrik.

[Rayuan ditolak.]

Legislation referred to:

Housing Developers (Control and Licensing) Act 1966

Housing Developers (Control and Licensing) Rules 1970, r. 12(1)(1)

[Appeal from High Court Malaya, Kuala Lumpur; Civil Appeal No: R2-12-10-94]

For the appellants - Won Walter Pereira (Kemkumar S. Lopez with whim); M/s. Kamarudin & Partners

For the respondent - Tan Ming-Li; M/s. Allen & Gledhill

JUDGMENT

Zakaria Yatim JCA:

The appellants are the administrators of the estate of Ahmad bin Ibrahim (deceased). The defendant is a housing developer within the meaning ascribed to it under the Housing Developers (Control and Licensing) Act 1966.

By a sale and purchase agreement ("the said agreement") entered into between the late Ahmad bin Ibrahim and the defendant on 4 April 1981, the said Ahmad

bin Ibrahim purchased from the defendant a house and land known as Lot No. 1338, Type B3, Taman Muda, Ampang, under the title H.S.(D) 2544 to 2552 for Lot Nos. 10093 to 10101, Mukim of Ampang, District of Ulu Langat for the purchase price of RM92,950.00. By cl. 18 of the said agreement, the defendant agreed to deliver vacant possession of the said house to the said Ahmad bin Ibrahim not later than 3 October 1982. The appellants alleged in the statement of claim that the defendant, in breach of the agreement, delivered the keys to the house on 25 July 1984 but there was no supply of water and electricity until January 1985. The appellants therefore claimed liquidated damages for late delivery calculated from 4 October 1982 to 25 January 1985 in the sum of RM17,398.20 together with interest and general damages.

The defendant, contended that the house was delivered to the appellants on 31 March 1983 and the delay was only for 179 days and not as alleged by the appellants. The defendant said under the agreement, the appellants were only entitled to claim for liquidated damages for delay in delivery of vacant possession by the defendant but did not include any delay caused by the relevant authorities to supply water and electricity to the said house.

The learned Sessions Judge decided that damages for late delivery was to be calculated from 3 October 1982 to 31 March 1983 for the delay of a period of 179 days. On appeal to the High Court, Siti Norma Yaakob J (as she then was) confirmed the decision of the learned Sessions Judge. In her grounds of Judgment, she said,

> There is no evidence to show otherwise although as at 31 March 1983, the house was not yet supplied with water and electricity. As the supply of such amenities is not the responsibility of the respondent, I consider that delivery of vacant possession had been validly effected on 31 March 1983, for as at that date, the respondent had fulfilled all their statutory and contractual obligations both under the Rules and under the agreement. The fact that water and electricity were supplied very much later is due very much to the delay of the relevant authorities, for which the respondent cannot be faulted and for which they had been exempted by clause 18 of the agreement. On that finding, I have no reason to disturb the decision of the Sessions Court and I had accordingly dismissed the appellants' appeal with costs.

The respondent contended that it had delivered vacant possession of the house on 31 March 1983. Miss Tan Ming-Li submitted that the internal mains were connected to the external mains on 31 March 1983. The connected to the external mains on 31 March 1983. The appellants said that on that date the house was not supplied with electricity. Mr. Walter Pereira, Counsel for the appellants argued that under cl. 18 of the said agreement vacant possession of the house was delivered when there was flow of water and electricity into the house. He said that electricity was supplied to the house only on 16 February 1985. It was also the appellants' contention that water was supplied to the house in January 1985.

It is now necessary to examine the relevant provision of the law and the relevant clause in the agreement. Rule 12(1) (1) of the Housing Developers (Control and Licensing) Rules, 1970 states as follows:

> (1) provisions binding on the licensed housing developer that he shall at his own costs and expenses cause of connection of electricity, water and sewerage mains of the Appropriate Authority or public authority with the internal electricity, water and sewerage mains of the housing accommodation erected for the purchaser"

We agree with Siti Norma Yaakob J that the Rule speaks of connection of the electrical and water mains and that the respondent's obligation was only to connect electricity and water mains to the internal electricity and water mains and not the flow of water and electricity.

Clause 18 of the agreement states as follows:

> (18) Subject to cl. 33 hereof and/or to any extension or extensions of time as may be allowed by the controller the said building shall be completed and ready for delivery of possession to the purchaser within eighteen (18) calendar months from the date of this agreement save that the Vendor shall not be responsible or liable for any delay on the part of the relevant authorities to supply water and/or electricity to the said building. Provided always that if the said building is not completed and ready for delivery of possession to the purchaser within the aforesaid period, delay cause by circumstances set out in cl. 33 hereof or delay on the part of the relevant authorities to supply water and/or electricity excepted, then the vendor shall pay to the purchaser agreed liquidated damages calculated from day to day at the rate of eight per centum (8%) per annum on the purchase price of the said property from such aforesaid date to the date of actual completion and delivery of possession of the said building to the purchaser.

The above clause is consistent with r. 12(1)(1). The clause explicitly provides that the developer shall not be responsible or liable for any delay on the part of the relevant authorities to supply water and electricity. We agree that vacant possession was delivered to the appellants on 31 March 1983.

In our view, the above Rule and cl 18 of the agreement, clearly state that the duty of the developer is only to connect the electricity and water mains to the internal mains. The supply of water, and electricity are the responsibility of the relevant authorities.

For the reasons stated above we dismiss the appeal with costs.

Reported by Gan Peng Chiang